(12)

Office - Supreme Court, U. S.
FEB 7 1944
CHARLES ELMORE CROPLEY
CLERK

# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1943

## No. 604

INTERNATIONAL LADIES' GARMENT WORKERS' UNION (an unincorporated association); DAVID DUBINSKY (as president of said association); FREDERICK F. UMHEY (as executive secretary of said association); and LOUIS LEVY (as a vice-president of said association), *Petitioners,*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, and HONORABLE ELMER ROBINSON, as Judge of said Court, *Respondents.*

## BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI to the District Court of Appeal, State of California, First Appellate District, Division One.

MILTON MARKS,
MORRIS LOWENTHAL,
111 Sutter Street, San Francisco 4, California,
*Attorneys for Respondents.*

## Subject Index

## Table of Authorities Cited

## Codes and Texts

# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1943

No. 604

INTERNATIONAL LADIES' GARMENT WORKERS' UNION (an unincorporated association); DAVID DUBINSKY (as president of said association); FREDERICK F. UMHEY (as executive secretary of said association); and LOUIS LEVY (as a vice-president of said association),

*Petitioners,*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, and HONORABLE ELMER ROBINSON, as Judge of said Court,

*Respondents.*

**BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI to the District Court of Appeal, State of California, First Appellate District, Division One.**

*To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:*

## A.

### ANSWER TO PETITIONERS' STATEMENT OF THE ISSUES INVOLVED.

On pages 1 to 4 and again on page 8 of the petition for writ of certiorari petitioners purport to present a summary of the facts and a statement of the questions presented by the petition. Inasmuch as the entire petition and the brief in support thereof are based upon the assumption that the facts stated in the petition and the questions set forth in the petition represent the correct exposition of the facts and of the issues, we propose to analyze the same and to demonstrate that there is no legal issue before this Court for consideration.

When respondent Court made its decision in this matter it did so in the form of a lengthy momorandum opinion and decision, which is now designated by petitioners as Exhibit C. Exhibit C is not a mere memorandum opinion which is occasionally rendered by a trial Court after a decision on the merits. It is actually the very decision itself on the motions to quash, as is demonstrated by the last paragraph thereof, and the portion of the decision which precedes the last paragraph represents the *findings* of the Court supporting that decision.

This construction of Exhibit C was accepted by the District Court of Appeal and the Supreme Court of

the State of California and both Courts, on the basis of the memorandum opinion and decision of respondent Court, refused to even issue an alternative writ in view of the lengthy findings of respondent Court and the abundant evidence in support thereof introduced before respondent Court at the hearings upon the motions to quash. The transcript of the testimony and evidence taken in connection with the motions to quash consists of over 2000 pages and the actual time spent in Court in the taking of testimony was, at a minimum, 15 full Court days. In addition to the 2000 pages of testimony and the 12 affidavits, there were introduced into evidence a total of 112 exhibits running many thousand pages in length. After briefs were submitted by both sides running well in excess of 450 pages in length, the respondent Court rendered its memorandum opinion and decision, which is 63 legal size pages in length. The entire record was presented to the District Court of Appeal as well as to the Supreme Court of the State of California. The District Court of Appeal refused to issue an alternative writ of prohibition and the Supreme Court denied a hearing. No judge of either the District Court of Appeal or of the Supreme Court of California has voted in favor of petitioners on the merits of their petition, although one judge in the District Court of Appeal voted in favor of issuing the alternative writ so as to give petitioners a hearing and two judges in the Supreme Court likewise voted for a hearing in that Court.

Thus this Court is presented with a decision of respondent Court on a dilatory motion to quash service

of summons which decision has been affirmed by the highest Courts in California and is amply supported by thousands of pages of testimony and exhibits.

Notwithstanding that fact, petitioners now argue to this Court that the findings of respondent Court must be set aside and that this Court should accept as the *factual basis* of their petition a view or statement of the facts directly contrary to the findings of respondent Court and to the evidence in the record. This same effort was made, unsuccessfully, by petitioners before the District Court of Appeal and before the Supreme Court of California.

The importance of this point cannot be underestimated. In order to establish a Federal question in this case petitioners have presented a completely erroneous statement of both the facts and the issues.

In the first place, petitioners say that the issue to be decided by this Court is whether it is a denial of due process for the State Court to assert jurisdiction over a labor union with respect to acts "committed out of the state and not arising out of acts done within the state". Petitioners then maintain that this point was the one which petitioners "in the first instance" (page 6 of Petition for Writ of Certiorari) consistently relied upon "at all stages" of this case through the various Courts which have considered this matter.

All of the aforesaid assertions are incorrect. The respondent Court expressly held that some of the acts which are the basis of the libel suit *were* committed in the State of California and that in any event all of the acts, whether committed in the state or out of

the state, *arose out of the business and transactions and conduct of petitioners in the State of California.* As found by respondent Court:

> "The California Superior Court has jurisdiction over the subject matter of this action which is based upon wrongs definitely and clearly related to and arising out of transactions and conduct of defendant International in the State of California". (Exhibit C, page 4.)

> "There is not the slightest doubt that the publication of the libels upon which the plaintiff's cause of action is based was *'related to', 'connected with'* and *'grew out of'* transactions and conduct of both Local 191 and the International in California." (Exhibit C, page 27.)

The respondent Court not only made these findings but in great detail quoted from the voluminous evidence in the record which supports these findings.

Therefore, the major premise in the petition for writ of certiorari, namely, that a Federal question is presented as to whether the State Court has jurisdiction over a labor union on a "foreign cause of action" which did not arise out of transactions or acts of that union in the State of California is erroneous as that question is not involved at all in this proceeding and therefore there are no grounds for the issuance of the writ of certiorari.

It is true that commencing at page 33 of the brief in support of the petition for writ of certiorari petitioners make a lame effort to reverse the findings of the respondent Court that the alleged libels arose, grew out of, and were connected with transactions and acts

of the International in California. Out of the many thousands of pages of the transcript and of the exhibits in the record a few isolated references from the transcript or from the exhibits are mentioned at pages 33 to 35 of petitioners' brief in the expectation that this Court will reverse the finding of the respondent Court although that finding is not only supported by the overwhelming preponderance of the evidence in the record but was affirmed by both the District Court of Appeal and the Supreme Court of California when the same argument was presented to those Courts by petitioners. We do not conceive it to be the duty and task of this Court to reverse a finding, correctly made and overwhelmingly supported by the evidence, in order to find a Federal question upon which a petition for certiorari may be based.

Secondly, petitioners are in error in asserting that the issue of whether a State Court has jurisdiction over foreign causes of action not arising from business transacted in the state was raised by them "in the first instance" and was the principal issue raised by petitioners at all stages of the proceedings. As emphasized by respondent Court in its decision (Exhibit C, page 12):

> "This objection to jurisdiction was not raised by defendant International in the motions made by the defendant to quash service of summons".

Although the ruling of respondent Court on that issue was characterized by petitioners before the District Court of Appeal and in the Supreme Court of California as "revolutionary and extraordinary", yet

petitioners thought so little of this point when they filed their motions to quash that it is not even mentioned in any of the 17 motions filed by them! Nowhere in any of the motions is it asserted, as one of the grounds for the motions to quash, that the International union cannot be sued in California upon a foreign cause of action and that to do so would violate due process of law. Thus, this alleged objection to jurisdiction, supposedly resulting in an "innovation" in the law and a "discrimination" against labor unions, was purely an afterthought of counsel and does not *even to this date* appear in any formal motion filed by petitioners. This afterthought has been so tortured and twisted and expanded until we find that the original and the only formal basis for petitioners' objection to the jurisdiction of the Superior Court, namely, that defendant union is a New York union and is not *doing business* in California, was *not even mentioned* in the petition that was filed for a hearing in the California Supreme Court and is given only ten lines of discussion in the brief (page 30) filed in support of the petition for writ of certiorari filed with this Court!

This fact is emphasized to place the motions to quash in their true light, namely, as mere dilatory pleas filed by petitioners in the hope of delaying the trial of the action on its merits. In this respect petitioners have succeeded very well since the summons in the action was served in November, 1941, and no pleading has yet been filed by petitioners.

Although in fact no issue is actually before this Court as to whether a State Court can obtain juris-

diction upon a foreign cause of action unrelated to business transacted in the state, we propose to answer petitioners' arguments as if that issue were before the Court, in order to show that under no theory are petitioners entitled to a writ of certiorari.

---

## B.

### CORRECTION OF STATEMENT OF PETITIONERS AS TO DECISION OF RESPONDENT COURT WITH REFERENCE TO THE UNITED STATES SUPREME COURT DECISIONS ON THE SUBJECT.

Petitioners throughout their petition for writ of certiorari and throughout their brief have erroneously stated that respondent Court has endeavored to "overrule" decisions of the United States Supreme Court on the question of whether a State Court may obtain jurisdiction upon a foreign cause of action unrelated to transactions occurring within the state. A careful reading of the memorandum opinion and decision of respondent Court (Exhibit C, pages 15 to 21) demonstrates beyond contradiction that at no time did respondent Court undertake to "overrule" or even to ignore any decision of the United States Supreme Court. Respondent Court, to the contrary, cited the decisions of the United States Supreme Court as well as the decisions of the State Courts on the subject. In doing so it called attention to the fact that the only authorities cited by *petitioners* on the question of whether due process would be violated if the State Court claimed jurisdiction over a non-resident *corporation* upon a foreign cause of action

were the decisions of *Old Wayne Mutual Life Association v. McDonough,* 204 U. S. 8, 51 Law. Ed. 345, decided in 1906, and *Simon v. So. Ry. Co.,* 236 U. S. 115, 59 Law. Ed. 492, decided in 1914. Both of these decisions had reference to *substituted* service upon a *public official* of a state. The Court then referred to later decisions of the United States Supreme Court, particularly that of *Mitchell Furniture Company v. Selden-Breck Construction Co.,* 257 U. S. 213, and *Missouri Pacific Railroad Co. v. Clarendon Boat Oar Co., Inc.,* 250 U. S. 533, 66 L. Ed. 354, both decided in 1922, together with seven very recent Federal Circuit Court and District Court decisions. The Court properly read these later decisions as holding that where in an issue arising in a Federal Court a state statute is relied upon as supporting the exercise of jurisdiction by the State Courts over a foreign corporation with respect to a foreign cause of action, *in the absence of any express provision in the statute and in the absence of any local construction of the statute by a State Court* the Federal Courts should not *construe* the state law to extend to suits arising out of business transacted by the foreign corporation out of the state. As correctly analyzed by respondent Court no decision of the United States Supreme Court since the *Missouri Pacific Railroad Company* and the *Mitchell Furniture Company* cases has held, in the absence of any question of a burden upon interstate commerce or the like, that a federal or constitutional question is involved in an action in a *State* Court against a foreign corporation upon a foreign cause of action. The only issue that occasionally

comes up in the Federal Courts for decision on this matter arises where the State Courts have *not* construed the state law purporting to grant jurisdiction over foreign corporations but not expressly stating whether the jurisdiction extends to foreign causes of action. Under such circumstances a few of the Federal District Courts have been inclined to follow the rule of the *Missouri Pacific Railroad Company* and the *Mitchell Furniture Company* cases of strictly construing these statutes so as not to encompass foreign causes of action, particularly where process was served upon a public official of the state. However, the great majority of the recent decisions of the Circuit Courts and the District Courts are inclined to follow the rule, almost universally applied by the State Courts, of liberal construction of the state statutes to include foreign causes of action.

In addition to the federal decisions on the matter, respondent Court cited two leading State Court decisions on the issue of due process of law, namely, *Trojan Engineering Corporation v. Greene M.T.P. Corp.* (Mass. 1936), 200 N. E. 117, and *Southern Ry. Co. v. Parker,* 21 S. E. (2d) 94 (1942), which held that due process of law was not denied when statutes identical with those of California were construed to provide for service of summons on foreign corporations with respect to foreign causes of action, particularly where no issue is involved of substituted service upon a public official but local agents of the foreign corporations were served with summons.

The decision in the *Trojan* case came up for consideration by the First Circuit Court of Appeal in *Canadian Pacific Ry. Co. v. Sullivan,* 126 Fed. (2d) 433. Inasmuch as a writ of certiorari was denied by the United States Supreme Court (1942), 316 U. S. 676, 86 L. Ed. 1766, 62 Sup. Ct. 1291, thus indicating an approval of the holding in the *Trojan* case, we cite the Canadian Pacific Ry. decision as direct authority on the subject. In that case the issue was presented as to whether service of summons on a commissioner of corporations was valid with respect to a foreign cause of action. The Federal Circuit Court cited the *Trojan Engineering Corporation* case and noted that the Massachusetts State Courts had construed the Massachusetts law (almost identical with Section 411 of the California Code of Civil Procedure) on the alternative method of service provided in the law (namely, service upon an officer of the corporation in the state) as validly applying to actions involving foreign causes of action. The Court then held:

> "We see no reason why one method of service should be held to be valid in actions like the present and the alternative method of service should not * * * we conclude that the defendant's rights under the due process clause have not been infringed."

Irrespective, however, of the approach by the Federal Courts on the matter of interpretation of these statutes, all of the Federal Courts, including this Court, have uniformly held that *whenever there has been a local construction by the State Courts of the*

*state statute or whenever the state statute in so many words purports to apply to foreign causes of action such construction and such a provision is valid and does not violate due process of law and the exercise of jurisdiction by the State Courts under such circumstances over foreign corporations or foreign associations even with respect to foreign causes of action cannot be questioned.*

As stated by the Federal District Court of Louisiana in *Lusk v. Pacific Mutual Life Insurance Co.*, 46 Fed. (2d) 502, where a state statute provides a procedure for insuring notice or knowledge to a foreign corporation of the bringing of the action:

> "The question * * * is not one of due process of law, but as to the scope and meaning of the statute as to whether it was intended to include causes of action arising elsewhere than in the state."

Accordingly it has been uniformly held that the Federal Courts will follow the construction and effect given by the State Courts to the state statutes:

> "The construction and effect given by the state court to a state statute of this character * * * will be followed by federal courts sitting within that jurisdiction."
>
> *Massachusetts Bonding & Ins. Co. v. Concrete Steel Bridge Co.*, 37 F. (2) 695, 696 (1930 C.C. 4th).

> "The Supreme Court of Missouri has construed and given effect to this statute in several different cases, and, that being so, its construction

is binding upon the federal courts within that jurisdiction."

*Saunders v. London Assur. Corp.*, 76 F. (2) 926, 927 (C.C. 8th, 1935).

Here in the instant case we have a situation where the California State Courts, from the Superior Court right clear through to the District Court of Appeal and the Supreme Court of the state, have uniformly construed the state statutes, *three* in number, as expressly granting to the State Courts jurisdiction over foreign associations (and foreign corporations) on foreign causes of action. This construction is in line with the great weight of American authority on the subject since most of the State Courts of this country have adopted the same rule in construing their own statutes, which parallel in many respects the language and terminology of the California statutes. Therefore, the construction placed upon the California statutes by the California Courts is binding upon this Court and the effort of petitioners at pages 24 to 29 to have this Court reverse that interpretation should be disregarded.

As a matter of fact the very question raised by petitioners was passed upon many years ago by this Supreme Court. As developed in the memorandum opinion and decision of respondent Court (Exhibit C, page 23), the California statutes had been construed by the Federal Circuit Court of Appeals of the 9th Circuit as well as by the Federal District Court in California in the identical manner as that of the re-

spondent Court in the instant case, and that construction received the attention of the United States Supreme Court. We have reference to the cases of *Denver & R. G. R. Co. v. Roller,* 100 Fed. 738, and *Mauser v. Union Pacific Rd. Co.,* 243 Fed. 274. As stated by respondent Court in its memorandum opinion and decision (Exhibit C, page 23):

> "These decisions (together with *Moore Machinery Company v. Stewart Warner* (D.C.N.D. Calif. 1939), 27 Fed. Supp. 526, held that the California statutes expressly authorized jurisdiction over a foreign corporation on a cause of action which arose out of the State of California. The Roller decision was interpreted by the Court in the Mauser case as having received the approval of the United States Supreme Court in the case of *Green v. Chicago, Burlington & Quincy Ry. Co.,* 205 U.S. 530, 533, 27 Sup. Ct. 595, 596. It has also been cited with approval by the California District Court of Appeal in the case of the *Thew Shovel Company v. Superior Court,* 35 Cal. App. (2d) 183 at 192."
>
> "The Mauser decision is cited in the California Annotation to the Restatement of Conflict of Laws at pages 45 and 46."

Allegedly contrary decisions of District Courts, such as that of *Fry v. Denver & R. G. R. Co.* (1915), D.C. N.D. Calif. 1915, 226 Fed. 893, have been correctly distinguished by respondent Court in its opinion and decision upon the grounds that they have been rejected as authority by both State and Federal Courts. (Exhibit C, pages 23-24.)

Petitioners have placed considerable reliance upon the decision of *Miner v. United Air Lines Tr. Co.*, 16 Fed. Supp. 930, 931. However, the District Court in that decision expressly held that it decided as it did because the California Supreme Court had not yet interpreted the California laws so as to cover foreign causes of action and that in the absence of a construction by the California Courts, the Federal District Court was not required to construe the law to cover foreign causes of action. This ruling obviously cannot be considered authority today in view of the construction of the California statutes made by the California Courts in the *instant* proceeding.

Thus we find that contrary to the major premise in petitioners' brief in support of the petition for writ of certiorari the Federal Courts do not hold that it is a violation of due process of law for foreign corporations to be subjected to the jurisdiction of the State Courts even with respect to a foreign cause of action. As a matter of fact, the chief authorities relied upon by petitioners, besides the *Old Wayne* and *Simon* decisions, are Sections 86 and 92 of the American Law Institute, Restatement of the Law, Conflict of Laws. However, the Restatement, contrary to counsel's interpretation, is *silent* on the issue of whether or not a corporation or an association can be sued upon a foreign cause of action and Sections 86 and 92 merely state that corporations and associations *can* be sued in the firm name on causes of action arising out of business done in the state.

The major premise of petitioners' argument having no basis or foundation, the balance of the argument falls of its own weight. If corporations can be subjected to the jurisdiction of the State Courts upon foreign causes of action petitioners must concede that associations such as labor unions could likewise be subjected to the jurisdiction of the State Courts. Petitioners' argument is that a foreign corporation cannot be subjected to jurisdiction and therefore a discrimination results when labor unions are made subject to the jurisdiction of the State Courts on such matters. However as previously developed in this brief, corporations do not have that right of immunity and therefore to claim immunity for labor unions is to demand that they be given a unique right not enjoyed by corporations or by other associations.

Contrary to the inferences in petitioners' brief, the respondent Court did not attempt to *impose* upon labor unions a rule applicable only to corporations. It was the International union that argued in the State Courts and that now argues before this Court that the decisions with respect to *corporations,* namely, the *Old Wayne* and *Simon* decisions, should be applied to labor unions. It being demonstrated that these two decisions are inapplicable the International union then takes the position that it is erroneous to apply to labor unions the principles of jurisdiction which have been adopted with respect to foreign corporations. This argument is made in the face of the case cited by respondent Superior Court in its memorandum opinion and decision (Ex-

hibit C, page 40), namely, *Brotherhood of Railroad Trainmen v. Cook,* 221 S.W. 1049, holding that since an international trade union occupies an intermediate position between a partnership and a corporation, both the law of corporations and the law of partnerships, in the absence of statutory regulations, are to be resorted to and a choice made between the law of partnership and that of corporations depending upon the nature of the feature under consideration. Furthermore, they ignore the references in the memorandum opinion to the principles stated in *Corpus Juris* to the effect that such associations are deemed to be quasi corporations for purposes of service of summons and jurisdiction. Finally, petitioners have omitted the complete reference to Section 86 of the Restatement, Conflict of Laws, particularly the comment to Section 86-(1) which reads:

> "In some states, by statute, partnerships and other unincorporated associations are subject to suit in the firm name. Under these statutes a partnership or other unincorporated association by doing business within the state subjects itself to the jurisdiction of the state *to the same extent* to which a foreign corporation subjects itself to the jurisdiction of that state."

This comment was the basis of the decision of *Western Mutual Fire Insurance Co. v. Lamson Bros. & Co.* (1941), 42 Fed. Supp. 1007, which held that the Court had jurisdiction over an Illinois partnership in an action in personam (conversion) by service of process on the manager of the partnership offices in Iowa.

California has a statute on the subject of service of process on foreign copartnerships, Civil Code Section 2472, similar to the statute with reference to service upon foreign corporations and associations.

The California statutes have been expressly construed to subject unincorporated associations and partnerships to suit in the firm or association name. The principal decision on this subject is that of *Jardine v. Superior Court*, 213 Cal. 301, 2 P. (2d) 756 (1931). That decision quoted extensively from other cases involving international and national labor unions and similar associations and held that such organizations under the California statutes may be sued as an entity and in their association name and irrespective of the fact that they may not be doing business in the state in a *commercial* sense. The *Jardine* decision relied upon such leading cases as *Pacific Typesetting Co. v. International Typographical Union*, 216 Pac. 358; *State ex rel. Griffith v. Knights of The Ku Klux Klan* (Kan.), 232 Pac. 254, 37 A.L.R. 1267, appeal to United States Supreme Court *dismissed for want of a Federal question*, 273 U.S. 264; *Knights of The Ku Klux Klan v. Commonwealth* (Va.), 122 S.E. 122; *Fitzpatrick v. International Typographical Union*, 194 N.W. 17.

The *Jardine* case was appealed to the United States Supreme Court and this Court in a *per curiam* decision (284 U.S. 592) held:

> "The appeal herein is dismissed for the want of a substantial Federal question. *Sugg v. Horton*, 132 U.S. 524; *United Mine Workers v. Coronado*,

259 U.S. 344. In accord, see *Operative Plasterers International Association v. Case,* 93 Fed. 2nd 56."

It is, of course, obvious from the authorities cited above in this brief that the assertion in petitioner's brief on page 17 that "This court has never passed upon the suability of non-resident labor unions or other unincorporated associations" is erroneous. To the contrary, there are many decisions not only of this Court, but of other Federal Courts on the subject, particularly since the *United Mine Workers v. Coronado Coal Co.* case, referred to in the *per curiam* opinion in the *Jardine* case.

Thus it appears that contrary to the arguments advanced in petitioners' brief in support of the petition for the writ of certiorari, the United States Supreme Court has repeatedly indicated that no federal question is involved or is presented when a state Court construes its own state statutes to apply to labor unions or other unincorporated associations, irrespective of whether they are foreign associations or domestic associations.

As a matter of fact, petitioners have not cited one solitary decision in the United States holding that an international labor union, or for that matter any unincorporated association, cannot be subjected to the jurisdiction of a State Court, whether on domestic causes of action or on foreign causes of action! Without authority in support of their position petitioners are maintaining that this International union, merely because it has offices in another state, is immune to

judicial process in California as a *defendant,* although that very International union (see *Levy v. Superior Court,* 15 Cal. (2d) 692, involving the *same* petitioners as in this proceeding) can prosecute actions against California employers and other residents in the California Courts.

Before leaving this subject we emphasize again, as did the respondent Court in its memorandum opinion and decision, that the issue of the ultimate *liability* of the union or of its individual members is not involved at all in this proceeding. Counsel for petitioners do not appear to understand the difference between the *procedural* issue of obtaining jurisdiction and the *substantive* issue of liability. Furthermore, counsel are in error in repeatedly stating throughout their brief that by obtaining jurisdiction over the union as an "entity" the plaintiff is attempting "to serve its non-resident members" (page 29 of brief in support of petition for Writ of Certiorari) and is attempting to get a judgment against individual members of the union, particularly non-resident members. The respondent Court in its opinion and decision (Exhibit C, pages 43, 39) expressly held that the issue as to whether California has jurisdiction to impose a personal judgment against individual non-residents who are members of the International union is not present in the instant case. The plaintiff in the action has not asked for and has expressly disclaimed any request for a money judgment against a non-resident individual who had not been served with summons and no motions to quash

had been filed on behalf of *any* individual members, as such, of the International.

Although specific discussion of the various California statutes is omitted from this brief in view of the adequate consideration given to them by the respondent Court in its opinion and decision, approved by the highest State Courts in California, we pause to quote from one portion of the respondent Court's decision (Exhibit C, pages 40-41) which rejected the interpretation of petitioners that Section 411 of the California Code of Civil Procedure applies only to "joint stock associations":

> "In this case Section 411 of the Code of Civil Procedure validly applies to non-resident associations and is not restricted to 'joint stock associations'. (*State ex rel. Cook v. District Court* (Mont.), 58 Pac. (2d) 273, referring to Sections 388 and 411 of the California statutes in interpreting an identical statute of Montana; *Pacific Typesetting Co. v. International Typographical Union* (Wash.), 216 Pac. 358.) In adopting as the mode of service upon a non-resident association the precise method of service used upon foreign corporations the California statute has merely followed the method adopted in most of the States."

---

## C.

### ANSWER TO CONTENTION THAT THE CLAIM OF JURISDICTION OVER THE INTERNATIONAL IS BASED UPON SERVICE OF PROCESS UPON AN INDIVIDUAL MEMBER OF THE UNION OR UPON LOCAL OFFICERS.

Throughout the brief in support of writ of certiorari counsel has maintained that the basis for the

exercise of jurisdiction over petitioners is service upon some individual members of the union and some local officers of the local union. This assertion is directly contrary to the facts, as the memorandum of opinion and decision of respondent Superior Court clearly establishes. The principal service relied upon to sustain jurisdiction is the service of summons upon Louis Levy and Rose Pesotta, who are vice presidents of the International Ladies' Garment Union and who have their offices in California. Although petitioners gratuitously state that these two individuals did not act as vice presidents in California, this assertion is contrary to the express findings of respondent Superior Court, which findings are amply supported by voluminous evidence in the record.

The activities of Louis Levy particularly received the extended consideration of respondent Superior Court since, as stated in the memorandum of opinion and decision (Exhibit C, page 56), Louis Levy has been described by the International in its official publications and by Levy himself in sworn Court documents as "Vice President and Pacific Coast representative and director of the International, as well as executive in charge of its Pacific Coast operations". The respondent Court has outlined in detail (Exhibit C, pages 56-58) the activities in California of the International officers, including the vice presidents and the International organizers, in carrying on the affairs and the business of the International in California, and in complete repudiation of the arguments made by petitioners, respondent Court held (Exhibit "C", pages 58-59):

"The contention of defendant International that the activities of its officers and agents in California have been and are conducted and performed by them on behalf of or as advisers to the locals and joint boards located in the State and are not activities of the International is thoroughly contradicted by the Constitution of the International, by the official publications of the International, by the nature of the activities themselves, and by the relations between the International and its subdivisions. It cannot be gainsaid that the officers and employees of the International, particularly the vice-presidents and the general or international organizers, do not perform their duties as advisers to or on behalf of the locals or joint boards but perform the same on behalf of and under the authority and direction of the International and their activities partake of the nature of *supervision* and *direction* of such locals or joint boards as come within the area of their activities."

Incidentally, although respondent Court did find from the evidence in the record that the International completely dominates and supervises all of the local unions with respect to all of their major and significant activities (Exhibit C, pp. 59-60) the Court did not use this finding as the basis for its decision that the International was doing business in California, that the International's representatives were carrying on activities of the International in California, and that the libels which were the basis of the cause of action arose out of activities of the International in California. These latter findings were based upon independent evidence in the record of what the International and its official representatives did in Cali-

fornia, separate and distinct from the activities of officers of Local 191.

---

## D.

### ERRONEOUS ASSERTIONS IN PETITION OF WRIT OF CERTIORARI IN BRIEF FILED IN SUPPORT THEREOF.

Every finding and assertion of fact by the respondent Court in its memorandum opinion and decision can be supported by voluminous references to the evidence in the record and to the exhibits (most of which consist of documents and reports officially published by the union itself). For that reason we have refrained from burdening this brief by referring to the many pages of evidence, in the transcript and in the exhibits, contradicting the numerous erroneous assertions appearing in the petition for writ of certiorari and in the brief filed in support of the petition. Instead we shall merely enumerate the many erroneous statements made by petitioners which are contrary to the findings of the respondent Superior Court on what are purely *factual* issues.

We have reference to the erroneous assertions of petitioners that the "Gantner and Mattern Strike Committee was organized by a group of citizens of New York City (page 2 of the Petition); that the strike committee did not jointly issue letters or leaflets with Local 191 of San Francisco or with the Western Offices of the Strike Committee; that the International as such did not publish any leaflets; that the two vice presidents were in California not as vice presidents but as officers of local unions; that the complaint filed in this action charges that the torts

took place outside of California (page 4 of the Petition); that the respondent Court ignored the distinction between the local union and the International "so as to treat the acts of the local as acts of the International and then assert jurisdiction over the International by reason of the acts of the local or its manager" (page 9 of the Petition); that the interest of the local and of the International in the present litigation "conflict" and a class suit cannot be brought (page 27 of petitioners' brief); that the libels did not originate from or arise from transactions of the International (page 33 of petitioners' brief); that the "only" connection of the International with the strike in San Francisco was the convention approval of the boycott (page 34 of petitioners' brief); that the boycott was invoked by the San Francisco local (page 34 petitioners' brief); that the complaint did not charge the International "with the commission of any libel", (p. 34, footnote 20 of petitioners' brief); that no "evidence was introduced to show participation by the International in a single libel" (p. 34 of petitioners' brief); that Jennie Matyas' activities were always under the direction of the Local and that she received her instructions from the Local exclusively and did not purport to act on behalf of the International (p. 35 of petitioners' brief); that there was no attempt to prove and there was no evidence that the International authorized or ratified the acts of Matyas, Nelson and the other representatives in respect to publication of the libels (p. 37 of petitioners' brief).

Each and every one of the aforesaid assertions is contrary to the express findings of respondent court

on these subjects and is contrary to the overwhelming evidence in the record. Almost all of the fifteen trial days and of the 2,000 pages of testimony and of the many thousands of pages of exhibits were devoted to the introduction of evidence proving the contrary of all of the above assertions made by petitioners. Petitioners were not only unsuccessful in persuading the respondent Court to adopt their view of the facts, but they were equally unsuccessful in their effort to persuade the District Court of Appeal and the Supreme Court of California to upset these findings.

---

## E.

### CONCLUSION.

The assertion in petitioners' brief (p. 16) that "it is plain from the entire opinion that the respondent is influenced by its attitude against labor unions," is utter nonsense. Nowhere in the memorandum of opinion and decision of respondent Court does there appear any indication whatever of any prejudice or bias either for or against labor unions. In order to remove any question in the matter, we make the flat assertion to this Court that respondent Court has always been recognized by labor unions in San Francisco as extremely fair and, if anything, partial *towards* labor unions in this State. Not even by stretching or distorting the facts in this case can it be said that a ruling by the respondent Court on a *motion to quash the service of summons*—and thus escape being brought to trial—indicates that the respondent Court in refusing to grant to the union an immunity not

enjoyed by any other entity, indicates or shows an adverse attitude towards labor unions. For an international union to contend that it cannot even be *sued* in California *solely* because it is a labor union, on a cause of action charging (with 35 pages of photostatic evidence attached to the complaint) that it deliberately pursued a nation-wide plan to damage and ruin the plaintiff firm through the unlawful use of defamation, is to do a disservice to the labor union movement itself.

No grave constitutional question involving due process is involved in this case. Certainly if it were involved, the District Court of Appeal and the Supreme Court of California would have issued an alternative writ. To the contrary, it was the feeling of those courts that petitioners had one of the most extensive trials and hearings ever granted to any defendant on a purely dilatory motion to quash service of summons and that the determination of respondent Court was so abundantly supported by the record and the evidence and by decisions of both Federal and State Courts that no issue of any consequence was raised requiring even a hearing in those Courts.

Under such circumstances, it is respectfully submitted that the petition for writ of certiorari should be denied.

Dated, San Francisco, California,
February 4, 1944.

Respectfully submitted,
MILTON MARKS,
MORRIS LOWENTHAL,
*Attorneys for Respondents.*